

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN HOWARD,

Petitioner,

vs.

SCOTT R. FRAKES, Director, Nebraska
Department of Corrections;

Respondent.

8:22CV254

MEMORANDUM AND ORDER

This matter is before the Court for initial review of Petitioner John Howard’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. ([Filing No. 1](#).) Under § 2254, the district court is authorized to “entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” [28 U.S.C. § 2254\(a\)](#). Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct an initial review of the petition and to summarily dismiss the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” *Id.* If the Court does not summarily dismiss the petition, it “must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the [Court] may order.” *Id.*

Howard was convicted in the District Court of Douglas County, Nebraska of first-degree sexual assault, sexual assault of a child, and first-degree sexual assault of a child in violation of Neb. Rev. Stat. §§ 28-319(1)(c), 28-320.01, and 28-319.01(2). On May 9, 2017, he received a sentence of 77 to 113 years’ imprisonment. He filed a timely notice of appeal, and his conviction and sentence were affirmed. Howard later filed a Motion for Postconviction Relief, which was denied. He appealed the denial of his Motion for Postconviction relief, which was denied by the

Nebraska Court of Appeals. He then filed a Petition for Further Review with the Nebraska Supreme Court, which was denied on July 13, 2021.

Howard, a state prisoner incarcerated within the Nebraska Department of Corrections, asserts in his § 2254 Petition that he is in custody in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Specifically, he maintains his constitutional rights were violated because (1) the trial court permitted the prosecutor to repeatedly misstate evidence; (2) the court overruled his objection during redirect examination; (3) the court denied a jury request to review certain exhibits; (4) the prosecution failed to disclose all impeachment evidence prior to trial; and (5) he received ineffective assistance of counsel at trial, and appellate counsel failed to raise ineffective assistance claims on direct appeal. ([Filing No. 1.](#)) Upon initial review, the Court finds summary dismissal is not warranted at this time.

Accordingly,

IT IS ORDERED:

1. The Clerk of the Court shall serve copies of this Order and the Petition to Respondent and the Nebraska Attorney General.
2. On or before August 16, 2024 Respondent shall file a response consisting of either an answer to the Petition in the manner contemplated by Rule 5 of the Rules Governing § 2265 Cases, or a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. The Clerk of the Court shall set a case management deadline for this date.
3. Whether filing an answer or a motion for summary judgment, Respondent shall file (1) a pleading titled “Designation of Relevant State Court Records,” describing in detail any records relevant to the Petition, and (2) copies of all records described in that designation.
4. If Howard determines that Respondent’s designation is insufficient, he shall have until August 30, 2024 to file a motion specifically requesting additional documents and explaining the reasons the documents are relevant to his claims.
5. Whether Respondent files an answer or a motion for summary judgment, Howard shall file any reply within thirty days after service of Respondent’s answer or motion.

Dated this 18th day of June, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Susan M. Bazis". The signature is written in a cursive, flowing style.

Susan M. Bazis
United States District Judge